

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL PUBLIC MEETING

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THURSDAY

FEBRUARY 23, 2006

The Special Public Meeting of the District of Columbia Zoning Commission convened in Room 220 South, at 441 4th Street, Northwest, Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Carol Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
GREGORY JEFFRIES	Commissioner
JOHN PARSONS	Commissioner (NPS)
MICHAEL G. TURNBULL	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN	Acting Secretary (ZC)
BEVERLEY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN

This transcript constitutes the minutes from the special public meeting held on February 23, 2006.

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AGENDA ITEMPAGECALL TO ORDER:

Carol Mitten 3

PRELIMINARY MATTERS:

Ms. Schellin (None) 3

PROPOSED ACTION:

A. Z.C. Case No. 05-36 3

Steve Cochran 4

VOTE 20

B. Z.C. Case No. 05-18 21

VOTE 23

ADJOURN:

Carol Mitten 23

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P-R-O-C-E-E-D-I-N-G-S

6:27 p.m.

CHAIRPERSON MITTEN: Good evening ladies and gentlemen. This is a special public meeting of the Zoning Commission of the District of Columbia for Thursday, February 23, 2006. And my name is Carol Mitten. And joining me this evening are Vice Chairman, Anthony Hood, and Commissioners Michael Turnbull, John Parsons and Greg Jeffries.

For some of you who are here for our hearing, we're having a special public meeting first, and then we'll start our hearing. And we're starting our special public meeting a little bit late and I apologize for that.

We have two matters on the agenda, unless there are any preliminary matters, Ms. Schellin, which we don't seem to have. So there's two items for proposed action that we had asked at our last public meeting for some additional submissions.

The first is Zoning Commission Case No. 05-36; which is the 200 K Street PUD. We have the submissions that we requested from the Applicant; which is basically a revised proposed order for us to consider.

I think probably the biggest issue that's

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1 outstanding has to do with the alternative design that
2 we had included at the encouragement of the Office of
3 Planning on the second stage PUD that would have a 90
4 foot height for the building along K Street up to a
5 depth of 40 feet. And there seems to be significant
6 financial consideration associated with that.

7 And, Mr. Cochran, I'm wondering if you can
8 help us understand, you know, did the Office of
9 Planning understand that when they made that
10 recommendation to us. And what kind of conversations
11 you might have had surrounding that.

12 MR. COCHRAN: Our recommendation was
13 certainly far more based on physical impact than on
14 financial considerations. There's no getting around
15 that. And our recommendation was clearly targeted to
16 the next time that the Applicant was coming back;
17 which would be phase two.

18 CHAIRPERSON MITTEN: Right.

19 MR. COCHRAN: We were asking for both -- we
20 were asking for design studies. And it would -- we
21 assumed that, in looking at 90 feet, if the Applicant
22 found the 90 feet and 40 foot set back to be something
23 that couldn't work, either esthetically,
24 programmatically, or financially, that the Applicant
25 would then be suggesting something in between that

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1 might step down at different levels or etc. You can
2 imagine.

3 We have not seen the -- the massing diagrams
4 to show what the impact would be. We don't have any
5 alternatives that look at 90 feet for 60 percent of
6 the facade and step back to 20 feet. We didn't ask
7 for those either. We simply said 90 feet at 40.

8 But again, given the usual give and take
9 that we have in a phase two, when this came back for
10 its next approval, we would have expected to have had
11 meetings and a discussion about whether it would work
12 or not.

13 We haven't had that opportunity, at this
14 point. So it's -- it's difficult to make a statement
15 one way or another. We would like to have had that
16 opportunity for discussion.

17 CHAIRPERSON MITTEN: Okay. So Mr. Jeffries?

18 COMMISSIONER JEFFRIES: So, Mr. Cochran, so
19 there was never any discussion from you as to
20 suggestions. I mean, it seemed like they were looking
21 at either 130 or 90, and no points in between, in
22 terms of height.

23 MR. COCHRAN: We -- yes. We gave them only
24 that other alternative. We had certainly assumed 130
25 feet along Second Street.

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1 COMMISSIONER JEFFRIES: Right.

2 MR. COCHRAN: And for the -- for K Street,
3 we had asked for 90 feet. We had not gotten so
4 specific as to whether to -- we looked at say the
5 corner of K Street and whether -- oh, and Second. And
6 whether that meant that we would be -- that our
7 suggestion would be slicing off one half of a double
8 loaded corridor wing. Again, we had assumed that all
9 of that would be part of -- of the discussion.

10 We certainly had no intention of reducing
11 the height along Second Street. And, if reducing the
12 height along Second Street was interpreted that way by
13 the Applicant and -- and they felt that there would be
14 a need to -- to reduce the efficiency of the
15 building's portion on Second Street because of our
16 request, that was certainly not something we intended.

17 We were looking at the step down from Second
18 Street over to the 90 foot height that the Applicant
19 already has on First Street -- excuse me, on Third
20 Street.

21 COMMISSIONER JEFFRIES: Well, listen. The
22 concern I have, and particularly given the fact that
23 I mean I wasn't around -- I wasn't on the Commission
24 when some of -- the first sort of, you know, review of
25 this -- this -- this application. And I know it's a

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1 different PUD and that's sort of what we saw -- we
2 saws it.

3 I'm just trying to get a sense of the
4 history of this -- this building height for this PUD,
5 going from the original to -- to now. Because, you
6 know, this is about managing expectations and I'm --
7 I'm -- I'm hoping that the Applicant has not gotten
8 the impression that, you know, 130 feet has been
9 absolutely acceptable from -- from the Office of
10 Planning and that that message was sent loud and clear
11 to them -- to the Applicant; that, in fact, you know
12 we would, under the phase two PUD, that we would
13 really like to make certain that we were -- you'd look
14 at, you know, height that is, you know, 90 or 110 or
15 whatever it is.

16 I just want to -- if you can just walk me --
17 just outline the history.

18 MR. COCHRAN: I'd be happy to. I didn't
19 bring the files that give the exact chronology for the
20 last ten years. I'm sorry. But, as you know, this is
21 an offshoot of a previously approved PUD grant. With
22 respect to that previously approved PUD, the Office of
23 Planning had supported 130 feet at the time of the
24 original decision in 1995.

25 There were several alternative plans that

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1 were floated, but not submitted to the Commission; all
2 of which showed 130 feet over on Second Street. Some
3 of which showed considerably less, at one point, along
4 Third Street.

5 Some of them showed the courtyard opening on
6 K Street; which would have broken up the massing on K
7 Street.

8 COMMISSIONER JEFFRIES: Yes.

9 MR. COCHRAN: So there would have been two
10 towers of 130 feet with a gap in between; some showing
11 the courtyard configured in other ways.

12 But the Office of Planning consistently
13 supported 130 feet on K Street. Because that was part
14 of the approved -- previously approved PUD.

15 With respect to the new PUD -- oh, excuse
16 me. But, did we ever discuss the impact of 130 feet
17 on the old PUD? And would we like to have seen it be
18 stepped down? We certainly told the Applicant that,
19 if we had our druthers, we would probably think that
20 -- that a somewhat smaller building or more stepping
21 back would have been preferable. But we were already
22 in a situation where there was an approved PUD.

23 COMMISSIONER JEFFRIES: Okay.

24 MR. COCHRAN: And we did not have that
25 flexibility. That was a preference, as opposed to a

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1 formal recommendation.

2 With the new PUD, we were caught in an
3 unusual situation where you ended one PUD that we had
4 supported, because of the history of it. And you
5 immediately ask the Applicant --

6 COMMISSIONER JEFFRIES: Right.

7 MR. COCHRAN: -- would you like to submit a
8 new PUD that's exactly the same as the other one.

9 If there had been a gap; if the old PUD had
10 expired and the Applicant had submitted a new PUD, we
11 would certainly have looked at that new PUD in light
12 of changed circumstances in the neighborhood. And we
13 would have had an opportunity for dialogue on whether
14 certain heights were appropriate; certain massing was
15 appropriate, and etc. Because the conditions have
16 changed in the last ten years.

17 We didn't have that opportunity. We already
18 had a PUD that -- that OP had supported at 130 feet.
19 We felt that we were therefore in the position of
20 continuing to support what we had already supported.
21 You know, we'd said it. We didn't want to go back on
22 that.

23 But, with respect to the previous case, we
24 had already said we would like to see a massing study
25 that looks at 90 feet along K Street for a distance

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1 back from 40 feet. So we stuck with that same
2 recommendation; thinking that we would be able to have
3 the discussion about different options for phase two
4 at a later time.

5 Is that clear enough?

6 CHAIRPERSON MITTEN: I think I have a
7 solution for this.

8 COMMISSIONER JEFFRIES: Yes.

9 CHAIRPERSON MITTEN: And I -- I mean, I'll
10 propose the solution, and then we'll find out if
11 everyone sort of shares just the -- the general --
12 well, if you would -- if what I heard you say here is
13 accurate. Which is, rather than taking OP's
14 recommendation, which is really just sort of an entre
15 for dialogue down the road, but it was perceived as
16 this -- and I -- I frankly did too; like, do this.
17 Not like, let's talk about this later.

18 Rather than directing them to do a study
19 that fixes a height at a certain -- that fixes the
20 height up to a certain set back, we could say the
21 following: the Commission is concerned with the
22 height of the second stage proposal at 130 feet along
23 K Street. The Commission expects the Applicant to
24 develop alternative design studies that ameliorate the
25 appearance of the 130 foot height in presenting the

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1 second stage application to the Commission.

2 So, we're putting them on notice we're
3 concerned. We'll let time tell how -- how the
4 solution is developed and -- but it's -- we're --
5 we're saying, but we do want you to come with
6 something. It might not be a height of 90 feet with
7 a 40 foot set back, you know, but we want something.

8 So I think it accomplishes what maybe Mr.
9 Cochran started out in -- in -- what his sentiment
10 was. And this is just a different tool to get there.
11 So, I guess the -- I guess the threshold question is
12 do we share a concern about the 130 foot height along
13 K Street.

14 COMMISSIONER TURNBULL: I would, Madam
15 Chairman. The only question I had on your description
16 there is that were you looking strictly for an
17 architectural solution or are we still looking at a
18 possible height?

19 CHAIRPERSON MITTEN: Well, I think it leaves
20 the door open. I'm not specifying what it should be.

21 COMMISSIONER TURNBULL: Okay. Okay.

22 CHAIRPERSON MITTEN: So, you know, whatever
23 they -- whatever they want to propose. But it says
24 clearly we want there to be --

25 COMMISSIONER TURNBULL: We want --

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1 CHAIRPERSON MITTEN: -- fodder for
2 discussion when they come back.

3 COMMISSIONER TURNBULL: Okay.

4 COMMISSIONER JEFFRIES: But what I don't
5 understand, Madam Chair, and I -- I think the
6 Applicant made a very compelling argument around the
7 financial feasibility of really pulling back this
8 program. Why would we have the Applicant go back and
9 do massing diagrams and so forth if they've made very
10 clearly that they're going to be harmed by really, you
11 know, shrinking this project?

12 CHAIRPERSON MITTEN: Well, I think the case
13 that was made by the Applicant is that they will be
14 harmed by this particular solution in a very dramatic
15 way. There may be other solutions that would not be
16 so dramatic, but will still address the 130 foot
17 height.

18 COMMISSIONER JEFFRIES: So, for example, if
19 they came back and looked at 110, or whatever?

20 CHAIRPERSON MITTEN: As a --

21 COMMISSIONER JEFFRIES: So, because they
22 really went from 130 to -- to 90, and there were no
23 points in between.

24 CHAIRPERSON MITTEN: Right. Right. So it
25 just says we want to talk about this. This is not

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1 fixed. That's what -- that's what I'm suggesting;
2 that 130 foot is not fixed. We want to talk about it.
3 If they say look, we've done all these different
4 studies and the numbers don't work unless we're at 130
5 feet, then, you know, we address that when we get
6 there. But we're putting our concern on -- we're
7 putting them on notice of our general concern.

8 COMMISSIONER JEFFRIES: Well, I don't really
9 have a concern about 130 feet. From -- from what I --
10 I've heard from the Office of Planning here and so
11 forth, I think that this Applicant has really relied
12 on a number of conversations with the Office of
13 Planning and, you know, really, quite frankly,
14 throughout this long process, I -- I'm just having
15 difficulties having them go back and revisit.

16 I -- I do agree, Madam Chair, that, you
17 know, in reading this, you know, I was struck with
18 like, you know, why did they not come back showing 110
19 in one block, or whatever? And we could have them
20 come back. And it would be interesting to see. But
21 I have to tell you, you know, given some of the
22 arguments that were set forth by their counsel, you
23 know, I would -- I would be surprised if -- if -- if,
24 you know, the argument is still pretty much the same.

25 But, I am definitely -- I'm willing, if the

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1 rest of the Commission is willing to -- to -- to, you
2 know, have them come back and walk through just
3 various heights as it relates to phase two. That's
4 fine.

5 CHAIRPERSON MITTEN: Okay. Mr. Hood, you
6 haven't been heard from on this subject.

7 VICE CHAIRPERSON HOOD: I don't know if I
8 actually share the concern about the 130 foot height,
9 as my colleagues do, to a point. I -- I kind of would
10 align myself with Commissioner Jeffries.

11 But let me say -- and I was looking for this
12 rather quickly, but I thought that that issue was
13 already discussed in the -- the beautiful sound bite
14 presentation that was presented to us. And this was
15 very helpful for me, so I appreciate that.

16 But I thought in here somewhere -- I guess
17 I'm contradicting myself, talking about a sound bite
18 and I can't find what I'm looking for. But -- but I
19 remember reading about that issue already being
20 discussed; the 130 foot height. And I understand
21 that, Madam Chair, that there's a concern.

22 But I also want to make sure that we send a
23 message, while it may be a concern for some of the
24 Commissioners, some may not quite have the same
25 concern. And also, that you can also come back and a

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1 second stage and still maybe have the option of that
2 130 feet height.

3 But I also wondered where we went from 130
4 feet to 90. So maybe it's somewhere in between. I
5 don't know if that's been looked at or it hasn't been
6 looked at. But I don't share the same concern on it.
7 I've -- I've sat on this Commission and done a lot
8 worse when it comes to heights in neighborhoods and
9 how it responds to the surrounding area.

10 So I -- I would -- I would align myself with
11 Commissioner Jeffries.

12 CHAIRPERSON MITTEN: Well -- okay.

13 COMMISSIONER JEFFRIES: And I -- I'm sorry,
14 Commissioner, go ahead.

15 CHAIRPERSON MITTEN: No. Please go.

16 COMMISSIONER JEFFRIES: And I have another
17 question. I'm -- I'm still trying to get my arms
18 around what has occurred in this market in this
19 neighborhood such that now 130 feet is -- is -- is
20 somewhat problematic from when this was approved in
21 the first go round.

22 MR. COCHRAN: Okay. It was a completely
23 different market then. And you needed an -- an awful
24 lot of boost to get anything feasible to be build in
25 this area. 130 feet might have been necessary to get

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1 -- to attract a tenant. And it was office space at
2 that point.

3 We -- the Commission has already decided
4 that, at the Children's Museum, the height limit would
5 be 110. That's another changed condition. We're
6 looking at the NOMA Study where I don't believe that
7 anything else would be recommended at 130 feet along
8 the tracks.

9 So those are the kinds of changed
10 conditions. We're looking at trying to establish a
11 transition from east and west of the tracks. 130 feet
12 along the tracks may well be appropriate. But we're
13 trying to work out a step down that goes to something
14 in between, between Second and Third Street, probably
15 90 feet on the west side of Third Street and probably
16 65 feet on the east side. We're simply trying to
17 establish that transition.

18 COMMISSIONER JEFFRIES: You know, and -- and
19 I respect, you know, obviously I -- I respect the work
20 that OP has done. But again, and I think what Madam
21 Chair has offered up, I mean, I can sign on to that.
22 But I do want to say that I -- in all the readings
23 that I've done in this file, I -- I think that this
24 Applicant has moved along in this process assuming
25 that 130 would be acceptable. You know, maybe perhaps

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1 the city would, you know, you know, move forward and
2 not quite like it, but move forward.

3 I just don't think there's been a lot of
4 push back on this 130. And I think that this
5 Applicant has relied on 130 and I have to tell you
6 this is still a pioneering area. I'm very familiar
7 with this area. I'm a developer that has a project
8 not far from here. And take it from me, it is a --
9 still a pioneering area. Investors are still sort of
10 on a -- on a look see basis.

11 And so, I -- you know, while things have
12 changes, you know, this -- this neighborhood is not
13 Columbia Heights or Shaw. And, while I appreciate
14 studies and -- and overlays, and things of that sort,
15 I think, in this particular project, I think the
16 Applicant has relied on the -- on the fact that, you
17 know, they would be able to move forward, and that we
18 have gotten -- they have gotten strung up on a lot of
19 technicalities and so forth.

20 So, I'm fine with Madam Chair in terms of
21 what you're looking to do. And they can come back and
22 -- and -- and look at some varying heights of this
23 building. But I just want to make it clear for the
24 record, I do not have a problem with the 130 feet.
25 And I would really like to see this -- this PUD moved

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1 forward, sooner rather than later.

2 CHAIRPERSON MITTEN: Thank you. I -- I
3 don't -- I appreciate the fact that you're willing to
4 move forward. And I'm hoping that Mr. Hood will
5 agree. I just want to -- I think, because we are
6 divided, all this language does is it leaves it open
7 for whoever might be sitting in these chairs when this
8 comes back to have that conversation to the extent
9 that they're of -- that they're feeling ambivalent.

10 And I think there are different approaches.
11 One is a massing solution and another one is an
12 architectural solution in terms of, you know, just
13 design. So, you know, there's different things that
14 can be done. And we're just -- we're just keeping the
15 door open for that dialogue and making, you know, just
16 making it clear that we want to have that
17 conversation. The conversation is not over.

18 So, if I can just -- can we have a consensus
19 about it?

20 VICE CHAIRPERSON HOOD: I' sorry. I'm just
21 curious, what it the height of your -- no, I'm just
22 playing. Just a joke. Just a joke.

23 COMMISSIONER JEFFRIES: It's not a PUD and
24 it's a hotel and it's something else. The other thing
25 that I wanted -- the Senate Square Project, and I --

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1 I keep -- it's 110, but I thought there were rooftop
2 embellishments that took that to 118. Why do I keep
3 saying that? Is that just not correct?

4 MR. COCHRAN: I don't know. There may be
5 embellishments. I don't know, sir.

6 CHAIRPERSON MITTEN: Okay. There were a
7 couple of other issues that, frankly, I think I can
8 make peace with and I -- I don't have specific
9 language that I would want to include in the order, in
10 general. But, you know, we talked about the dispersal
11 of the units throughout the building. And I'm glad
12 the Applicant has gone up one floor.

13 And then the, you know, the 95 percent rule,
14 as it's now being called about sizes. I think it --
15 as long as we articulate -- because one of the things
16 that we wanted to -- to generate a certain level of
17 consistency in our acceptance of an affordable housing
18 proffer.

19 And I think as long as we make it clear
20 that, in this particular case because of the amount of
21 the affordable housing that's being offered, that
22 we're willing to be flexible on certain items. So
23 that it's not -- so that other applicants who come
24 forward with a more, let me just say, typically --
25 typical affordable housing proffer in terms of

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1 quantity, that they won't be queuing off of this.
2 They'll be queuing off of our other -- off of
3 inclusionary zoning to a greater extent.

4 So, I think we can craft some language that
5 would handle that. And, aside from that, I think I
6 can -- I can accept the revised decision section of
7 the -- of the proposed order; with my -- with the
8 language that we would insert about just flexibility
9 to reexamine the design of the building at 130 feet
10 along K street. And, Mr. Hood?

11 VICE CHAIRPERSON HOOD: I was going to move
12 approval of Madam Chair and Zoning Commission Case No.
13 05-36, with whatever -- with the amendment that you
14 proposed as -- and I guess we can craft it. And I'll
15 just read, first stage of Consolidated PUD Related Map
16 Amendment of 200 K Street, N.E., with the amendments
17 that we've discussed.

18 CHAIRPERSON MITTEN: All right. I'll second
19 it. Okay. Is there any further discussion? Then all
20 those in favor, please say aye.

21 ALL: Aye.

22 MR. MARKHAM: Ms. Schellin, we have none
23 opposed.

24 MS. SCHELLIN: Yes. Staff will record the
25 vote four to zero to one to approve proposed action in

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1 Case No. 05-36; Commissioner Hood moving; Commissioner
2 Mitten seconding; Commissioners Turnbull and Jeffries
3 in favor; Commissioner Parsons not voting, having not
4 participated.

5 CHAIRPERSON MITTEN: Okay. The next case
6 for proposed action in our Special Public Meeting is
7 Case No. 05-18, which is the Hope 7 Monroe Street PUD.
8 Okay. So what we had asked for, the Applicant did us
9 a favor and did a whole proposed order. There again,
10 we were either seeking a proposed draft order or at
11 least the -- the section that includes the conditions
12 that they're offering.

13 One thing that I just want to remind the
14 Commission of that's not contained in the order is
15 that they're -- they, in addition to asking for a PUD
16 related map amendment and some relief, is they're
17 asking for a waiver of the minimum area requirements.

18 And so I -- I believe that they meet the --
19 the test for that. Although I can't articulate the
20 test off the top of my head. But it has to do with
21 being 80 percent residential and I forget what the
22 other provisions is. But -- and you're not -- and Mr.
23 Jeffries isn't sitting on this case.

24 So, aside from that, the only thing that I
25 -- I just wanted to call out so that my colleagues are

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1 aware of it, I think they've captured all of their
2 proposed -- all of the proffers that they had proposed
3 in the decision section. And I -- and I would say
4 that they're not -- they have not included in the
5 decision section the requirement to lease space to the
6 ANC. Because -- and I'm -- and I'm comfortable with
7 that because I didn't think that that was, you know,
8 that's not an amenity. Because -- it's not an amenity
9 in my book because they were offering that at what I
10 perceive to be market rents. So it's -- it's -- they
11 can lease at market rent to whomever they -- they
12 like.

13 VICE CHAIRPERSON HOOD: Madam Chair, this is
14 going be work. Because when I look in the decision
15 area, number 9, it just says Applicant shall abide by
16 the executed donations -- I thought it was like a
17 value there and some other things.

18 CHAIRPERSON MITTEN: There is. And I --

19 VICE CHAIRPERSON HOOD: So it's going to be
20 reworked before we can finalize?

21 CHAIRPERSON MITTEN: Yes. And I don't think
22 -- and it would -- it will not be inconsistent with
23 what they're -- what they're showing.

24 VICE CHAIRPERSON HOOD: What's in the draft.

25 CHAIRPERSON MITTEN: Because we -- they did

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1 give us, for the record, the copies of those -- of
2 those commitment letters. So -- but we'll capture
3 what is on page 4 in finding of fact No. 15F, where
4 the specific amounts --

5 VICE CHAIRPERSON HOOD: Oh, okay.

6 CHAIRPERSON MITTEN: -- of the donation are
7 listed. So I would move approval of Case No. 05-18.

8 VICE CHAIRPERSON HOOD: Second.

9 CHAIRPERSON MITTEN: Is there any further
10 discussion? All those in favor, please say aye.

11 ALL: Aye.

12 CHAIRPERSON MITTEN: I believe we have none
13 opposed, Ms. Schellin.

14 MS. SCHELLIN: Staff will -- Staff will
15 record the vote three to zero to two to approve
16 proposed action in Zoning Commission Case No. 05-18;
17 Commissioner Mitten moving; Commissioner Hood
18 seconding; Commissioner Turnbull in favor;
19 Commissioners Jeffries and Parsons not having
20 participated, not voting.

21 CHAIRPERSON MITTEN: Thank you. All right.
22 We're ready to wrap up our Special Public Meeting.
23 And that is now adjourned.

24 (Whereupon, the Special Public Meeting was
25 adjourned at approximately 6:52 p.m.)

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